

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0565, State of NH v. Neville Mahadeo, the court on June 17, 2005, issued the following order:

Following a jury trial, the defendant, Neville Mahadeo, was convicted of criminal threatening with a deadly weapon and criminal restraint. On appeal, he contends that the trial court erred when it refused to allow the defendant to impeach the victim with letters that she wrote to him. We affirm.

The trial court's ruling barred the defendant from referring to letters written by the victim and not disclosed to the State prior to trial in which she recanted her accusations. The defendant argues that the trial court unsustainably exercised its discretion in imposing the sanction after finding that the defendant violated Superior Court Rule 98. To show an unsustainable exercise of discretion, the defendant must show that the decision was unreasonable to the prejudice of his case. State v. Roldan, 151 N.H. 283, 287 (2004). "In the context of a discovery violation, actual prejudice exists if the defense has been impeded to a significant degree by the nondisclosure. *Id.* (quotation omitted). He also argues that the ruling violated his rights under Part I, Article 15 of the New Hampshire Constitution and the Sixth and Fourteenth Amendments of the Federal Constitution. See State v. Flynn, 151 N.H. 378, 388 (2004) (once defendant has been permitted a threshold level of inquiry, constitutional right to cross-examine adverse witnesses has been satisfied and trial court's limitation of further cross-examination will be upheld unless defendant demonstrates ruling was clearly untenable or unreasonable to the prejudice of his case).

In this case, the defendant elicited testimony from the victim that she was upset about his relationship with his ex-girlfriend and that the victim had threatened her. The victim also testified on cross-examination that she frequently wrote to the defendant while he was in jail, saying that she loved him and apologizing for making up a story. Defense counsel read from one of the victim's letters in which she again apologized for fabricating her statement. Evidence was also admitted through the victim as well as other witnesses of her recantation of the charges and subsequent recantation of the recantation. Given the extensive testimony elicited from the victim concerning her fabricated statements to the police, her attorney and the courts, we find no prejudice and affirm the defendant's conviction.

Affirmed.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**